Potential Constitutional Infirmities of Iowa's Current Lawyer Advertising Rules[1]

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Overview

Protection of commercial speech under the First Amendment to the U.S. Constitution that is not false or misleading extends to lawyer advertising. While a state may hold legitimate interests in preventing commercial speech that is coercive, it also must ensure the public's access to the free flow of consumer information. The election between "the dangers of suppressing information, and the dangers of its misuse" is precisely the choice "the First Amendment makes for us" as it favors speech over censorship. *Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 745, 770 (1976).

First Amendment case law developed after *Virginia Board of Pharmacy* demonstrates that the states no longer may categorically ban a lawyer's right to advertise, nor can they adopt enforceable regulations without demonstrating that they directly advance a substantial governmental interest by narrowly drawn means. Regulations affecting lawyer advertising must protect against real, demonstrable harms and alleviate them to a material degree. Otherwise, they will likely violate the First Amendment.

Iowa's Rules of Professional Conduct (Iowa Court Rules 32.1.0 et seq.) comprise the Iowa Supreme Court's primary regulations that limit—and in some instances prohibit—lawyer communications and advertising. *See* Iowa Court Rules 32.7.1–7.8 (hereinafter "lawyer advertising rules"). For example, current Iowa lawyer advertising rules expressly *prohibit* "undignified" public statements, television advertisements containing moving objects or the

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voice of the lawyer, and descriptions of the lawyer's services that do not accord to the exact phrasing of the applicable regulation.

These restrictions, and perhaps others, likely cannot withstand constitutional scrutiny under First Amendment precedent, especially in light of modern case law that recognizes the central role commercial speech plays in the provision of legal services. Most recently, on June 23, 2011, the U.S. Supreme Court in *Sorrell v. IMS Health Inc.* measured state restrictions on commercial speech under a heightened scrutiny analysis. No. 10-779, 2011 WL 2472796 (June 23, 2011). In striking down a Vermont law that restricted pharmaceutical manufacturers' use of prescription records for marketing their drugs to doctors, the Court emphasized that expressive speech must withstand "heightened scrutiny whenever the government creates 'a regulation of speech because of disagreement with the message it conveys.'" *Id.* at *9 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Burdens on protected speech aimed at silencing specific content or speakers—regardless of whether the speech is false or misleading—likely will not constitute reasonable regulations of commerce but instead will be deemed impermissible restrictions on protected expression. *Id.* at *9, *12.

Given this standard of heightened review, Iowa's governmental interests in preventing deceptive marketing by lawyers and assuring consumer access to information likely can be served through less restrictive means. Iowa's lawyer advertising rules likely must be revised so they: (a) better promote availability of truthful and non-deceptive commercial information about legal services to consumers, and (b) avoid unduly restricting accurate and effective communications to the public by Iowa's lawyers even though a regulator might deem the content or method of communication as undesirable.

I. The First Amendment Safeguards Lawyer Advertising from Regulation that Fails Heightened Scrutiny

The First Amendment protects truthful commercial speech—including lawyer advertising.[2] To that end, the Supreme Court has consistently held that a state cannot adopt prophylactic prohibitions that restrict the rights of lawyers to advertise their services. And most recently, the Court's decisions demonstrate that a state may not restrict commercial advertising merely because it disagrees with the persuasive value or goal of the advertisement's content or speaker. Instead, a state may *reasonably* regulate certain advertisements or solicitations, but only if it can demonstrate a substantial governmental interest that is directly advanced by narrowly drawn means.

Put another way, where the speech advocates unlawful activities or is false and misleading, the state may proscribe the communication. Otherwise, a state may adopt limited restrictions—disclosures, filing of copies, or waiting periods—that effectively prevent misleading advertising but avoid chilling the essential right of lawyers and their prospective clients to constitutionally protected information.

A. Lawyer Advertising Is Protected Commercial Speech

The Supreme Court held that commercial speech is entitled to First Amendment protection for the first time in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 745 (1976).[3] In striking down a Virginia statute that prohibited pharmacists from advertising prescription drug prices, the Court concluded that a state could not completely suppress the communication of such information because commercial speech

[2] The memorandum focuses on law developed under the First Amendment of the U.S. Constitution. But similar, if not more expansive, independent state free speech rights likely are secured by Article I, § 7 of the Iowa Constitution.
[3] This decision overturned the traditional notion that First Amendment protection only extended to political speech and not commercial advertising. *See, e.g.*, *Valentine v. Chrestensen*, 316 U.S. 52 (1942).

deserves an intermediate level of protection that falls somewhere between wholly unprotected speech and completely protected political speech. *Id.* at 771 n.24.

Speech does not lose protection merely because the speaker's interest is purely economic. *Id.* at 761 (citing *Buckley v. Valeo*, 424 U.S. 1, 35–39 (1976) (protecting speech made with assistance of monetary spending); *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964) (protecting speech made to solicit a purchase or monetary contribution); *Smith v. California*, 361 U.S. 147, 150 (1959) (protecting speech made to earn profit)). The Court balanced several interests in making this determination, deciding that the advertiser's interest in the free flow of information and the consumer's interest in access to pricing data outweighed the state's competing interest of "maintaining a high degree of professionalism" among licensed pharmacists. *Id.* at 763, 769. Realistically, an advertising ban has no preventive effect on pharmacists "cutting corners," and consumers can only know where to purchase the most cost-effective prescription drugs through "open . . . channels of communication." *Id.* at 763, 770.

The Supreme Court extended this newly articulated doctrine to protect legal advertising a year later in *Bates v. Arizona State Bar*, 433 U.S. 350 (1977). In holding that Arizona's blanket prohibition on price advertising of routine legal services (Appendix A) violated the First Amendment, the Court provided numerous grounds as to why the state's proffered justifications for the ban failed to pass constitutional scrutiny, *Id.* at 367–79:

> *First*, lifting restrictions on legal advertising would not adversely affect professionalism (i.e., price advertising will not lead to commercialization and undignified behavior, undermine the profession's service orientation, or erode the client's trust). *Id.* at 368–73. Clients do not expect that lawyers render legal

services free of charge, and the lack of price advertising creates public disillusionment about the actual costs of legal services. *Id.*

Second, advertising of legal services is not inherently misleading: only routine services that do not require individualized pricing schemes are conducive to advertising, a prospective client will be able to identify the service needed at the "level of generality to which the advertising lends itself," and the public is sophisticated enough to realize the limitations of advertising and determine which attorney can meet their needs. *Id.* at 373–75.

Third, advertising actually improves the administration of justice by ensuring access to legal relief for those who would otherwise not seek help for fear of the cost or suitability of a lawyer. *Id.* at 375–77.

Fourth, any increase in overhead costs to the profession will be offset by the increased volume of business generated by advertising, and advertising will not create entry-barriers for young attorneys because they will need to rely less on contacts within the community to generate business. *Id.* at 377–78.

Fifth, restrictions on advertising are ineffective at regulating the quality of legal services; whether an attorney will meet the client's needs or simply provide a "standard package" of services is unaffected by an increased flow of communication to the consumer public. *Id.* at 378–79.

Finally, any difficulties of enforcement through other courses of action are unpersuasive; "[f]or every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward." *Id.* at 379.

B. Under Heightened Scrutiny, States May Only Regulate Lawyer Advertising in Narrow Circumstances

While holding that a state could not flatly prohibit all advertising of legal services, the Supreme Court in *Bates* did note that a state may adopt reasonable regulations in limited circumstances. *Id.* at 383; *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 622–23 (1995). To determine whether a regulation of legal advertising is valid, the Court has applied the three-part framework of *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). Under the *Central Hudson* test, the state may prohibit commercial speech that concerns unlawful activity or is false and misleading. *Fla. Bar*, 515 U.S. at 623–24 (citing *Central Hudson*, 447 U.S. at 563–64); *see also Bates*, 433 U.S. at 383–84 (reasoning that, unlike in other contexts, the public may be deceived by misstatements about the quality of services). But if the commercial speech regards a legal transaction or is truthful and non-deceptive, a state may only regulate it if it can satisfy three requirements: (1) it "must assert a substantial interest in support of its regulation"; (2) it "must demonstrate that the restriction . . . directly and materially advances the interest"; and (3) the "regulation must be 'narrowly drawn.'" *Fla. Bar*, 515 U.S. at 624 (citing *Central Hudson*, 447 U.S. at 564–65). The third prong does not require the "least restrictive means"; rather, it requires a "reasonable fit" between the legislator's ends and the means chosen to accomplish those ends. *Id.* at 632 (citing *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989)).

The Court's recent decision in *Sorrell* not only reaffirmed the *Central Hudson* test, but it analyzed the advertising restrictions under "heightened scrutiny." 2011 WL 2472796, at *9. Although the Court since *Bates* has evaluated restrictions on lawyer advertising under "intermediate scrutiny," *Sorrell* applied a stricter standard of review where the state regulation seeks to suppress either the content of the speech or the identity of its speaker. *Id.* at *12.

Content- or speaker-based lawyer advertising rules should thus be subject to a heightened level of scrutiny.

1. The Supreme Court Has Struck Down Multiple State Regulations of Lawyer Advertising

The Court has applied the *Central Hudson* test to overturn several cases of state restraints on lawyer advertising. In *In re R.M.J.*, the Court held unconstitutional Missouri's prohibition against a lawyer's mailing of announcement cards to persons other than "lawyers, clients, former clients, personal friends, and relatives," listing practice areas in language that deviated from a precise listing of permissible terms, and stating the jurisdictions in which the lawyer was licensed to practice (Appendix B). 455 U.S. 191 (1982). The state could not demonstrate that mailings would be more difficult to supervise than newspapers, especially enough to justify an absolute prohibition; the listing of practice areas in terms different from what the rules allowed was not misleading but often more informative; and a listing of jurisdictions in which the attorney is licensed is highly relevant information that is not misleading on its face. *Id.* at 205. But the state could require the lawyer to retain a copy of generally mailed advertisements for a certain period of time or to stamp on the envelope of an advertisement the words "This is an Advertisement" to mitigate any possibility of deception. *Id.* at 206 nn.19–20. Ultimately, the state may not regulate legal advertising through means "broader than reasonably necessary to prevent the perceived evil." *Id.* at 203.

In *Zauderer v. Office of Disciplinary Counsel*, the Court struck down Ohio's prohibition on the use of illustrations in newspaper advertisements (Appendix C). 471 U.S. 626 (1985). To solicit women injured by the Dalkon Shield, the lawyer published a truthful, non-misleading newspaper advertisement with an accurate illustration of an IUD. *Id.* The Court ruled that at the very least, the state may not categorically prohibit the solicitation of legal business through

truthful and non-deceptive print advertising because print advertising lacks "coercive force" that might pressure a potential client. *Id.* at 642. And as to the illustrations, the Court found they serve an important communicative function, the state's interest in preventing undignified behavior is insufficient, and visual content is not inherently misleading. *Id.* at 648–49.

In *Shapero v. Kentucky Bar Association*, the Court held unconstitutional Kentucky's prohibition on targeted direct-mail solicitations to potential clients known to have specific legal problems (Appendix D), distinguishing mass mailings to the general public. 486 U.S. 466 (1988). The Court once again reiterated that the mere possibility for isolated abuses or mistakes is insufficient to justify a total ban on protected commercial speech. *Id.* at 476. Direct-mail solicitation—unlike in-person solicitation—"poses much less risk of overreaching or undue influence," and the recipient of the letter can easily ignore the advertisement by disposing of it. *Id.* at 475. A state could utilize more precise means of regulating direct-mail solicitations—such as filing requirements and disclaimers—but a prophylactic ban is unwarranted because written solicitation "'Conve[ys] information about legal services [by means] that [are] more conducive to reflection and exercise of choice on the part of the consumer.'" *Id.* at 476 (quoting *Zauderer*, 471 U.S. at 642).

Finally, in *Peel v. Illinois Attorney Registration & Disciplinary Commission*, the Court struck down Illinois's prohibition on the use of notations indicating that the lawyer is "certified" as a "specialist" (Appendix E). 496 U.S. 91 (1990). The lawyer—who was certified as a civil trial specialist by the National Board of Trial Advocacy—had a right to represent so even though the state had not adopted certification of specialties. *Id.* The Court distinguished the certification notation from an opinion as to the quality of the lawyer's services, reasoning that the certification was verifiable fact. *Id.* at 104–05. It noted, "We prefer to assume that the average

consumer, with or without knowledge of the legal profession, can understand a statement that certification by a national organization is not certification by the State, and can decide what, if any, value to accord this information." *Id.* at 106. The state again asserted its actions were directed at preventing exploitive statements, but it should have adopted lesser restrictive screenings or disclaimers that "facilitate[] the consumer's access to legal services and thus better serve[] the administration of justice." *Id.* at 110.

2. The Supreme Court Has Upheld Restrictions on Lawyer Advertising in Three Limited Circumstances

The Court has only found the state's interest in regulating the advertising of its licensed attorneys sufficient to justify restrictions within three narrow contexts: in-person solicitation, disclosures relating to contingency fee arrangements, and waiting periods after accidents or disasters.

First, in *Ohralik v. Ohio State Bar Association*, the Court upheld Ohio's prohibition on in-person solicitation for pecuniary gain (Appendix F), but it was careful to premise its decision on the coercive nature of face-to-face communication. 436 U.S. 447 (1978). In-person solicitation runs the risk of overreaching, invasion of privacy, the exercise of undue influence, and fraudulent misrepresentation. *Id.* at 464–65. But in-person solicitation for legal employment "does not stand on a par with truthful advertising about the availability and terms of routine legal services." 436 U.S. at 455. Consequently, *Ohralik* is the only instance since *Bates* where the Court has found the state's interest justified a complete ban on truthful, non-deceptive lawyer advertising.

The Court did overturn the disciplining of a lawyer for in-person solicitation in the companion case of *In re Primus*, 436 U.S. 412 (1978), but it distinguished its decision from

Ohralik.[4] The lawyer—who worked for the American Civil Liberties Union—sent letters to clients to challenge South Carolina's regulation conditioning future medical assistance on a woman's consent to sterilization (Appendix G). 436 U.S. at 439. But the Court analyzed this type of speech under strict constitutional scrutiny, reasoning that the lawyer's status as a member of an organization that uses litigation to communicate political statements meant that "political expression or association" was at issue. *Id.* at 434. Broad prophylactic rules regulating free expression are immediately suspect, and the state may only regulate in that area with precision and narrow specificity. *Id.* at 432–33 (citing *NAACP v. Button*, 371 U.S. 415, 433 (1963)). The Court held that a showing of potential danger in the context of "political expression or association"—"as opposed to in-person solicitation for pecuniary gain under circumstances likely to result in adverse consequences"—is insufficient to justify a complete ban. *Id.* at 434.

Second, even though the Court in *Zauderer* upheld the lawyer's right to advertise with illustrations, it declined to overturn the state's requirement that advertisements promoting contingent fees disclose whether the client would be responsible for the costs of the suit (Appendix C). 471 U.S. at 653. Because it was misleading to refer to contingency fee arrangements without mentioning the client's potential liability for the costs of their cases, the disclosure requirement was sufficiently narrow to prevent public misperception. *Id.*

Finally, the Court has only upheld a restriction on lawyer advertising in one other instance, the case of *Florida Bar v. Went For It, Inc.*, 515 U.S. 618. Florida prohibited targeted direct-mail solicitations to accident or disaster victims or their families until a thirty-day waiting period had expired (Appendix H). *Id.* Based on a two-year study of the effects of lawyer advertising on public opinion, the Court found that (1) the state has a substantial interest in

[4] Fifteen years later, the Supreme Court struck down a similar state ban on in-person solicitation by certified public accountants, but it reaffirmed the holding of *Ohralik* that such a ban remains constitutionally permissible as applied to lawyers. *Edenfield v. Fane*, 507 U.S. 761 (1993).

protecting the privacy of victims' families after traumatic events and the reputation of the legal profession, (2) the study showed that the public was offended by these solicitations and a thirty-day ban directly advances the state's interest, and (3) the regulation is narrowly tailored to achieve the directed results. *Id.* at 625–34. The Court made clear that its holding was largely premised on the unrefuted factual record, including the two-year study, that the Bar submitted. *Id.* at 628. The Court distinguished the thirty-day waiting period from the factual circumstances of *Shapero*, which dealt with a categorical ban on all direct-mail solicitations, regardless of the timeframe. 486 U.S. at 475.

C. Since *Florida Bar*, the Supreme Court Has Consistently Protected Commercial Speech

Despite the Court's narrow holding in *Florida Bar*, it has since affirmed the level of scrutiny afforded to commercial speech as applied in contexts other than the legal advertising. In *Ibanez v. Florida Department of Business and Professional Regulation*, the Court upheld the right of a lawyer, who was also a certified public accountant and financial planner, to advertise those credentials truthfully. 512 U.S. 136 (1994). Writing for the majority, Justice Ginsburg strongly defended the application of the *Central Hudson* test to professional advertising: "The State's burden is not slight; the 'free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful.'" *Ibanez*, 512 U.S. at 143 (quoting *Zauderer*, 471 U.S. at 646). "'[M]ere speculation or conjecture' will not suffice; rather the State 'must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.'" *Id.* (quoting *Edenfield*, 507 U.S. at 770–71).

In *44 Liquormart, Inc. v. Rhode Island*, the Court held unconstitutional a complete ban on truthful, non-deceptive advertising of liquor prices premised on protecting the public health. 517

U.S. 484 (1996).[5] The Court reaffirmed the principles set forth in *Virginia Board of Pharmacy* twenty years prior:

> Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. . . . . There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them. If they are truly open, nothing prevents the "professional" pharmacist from marketing his own assertedly superior product, and contrasting it with that of the low-cost, high-volume prescription drug retailer. But the choice among these alternative approaches is not ours to make or the [state's]. It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us.

Id. at 496–97 (quoting *Va. Bd. of Pharmacy*, 425 U.S. at 765, 770). The Court also held that its reasoning in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 472 U.S. 328 (1986), which upheld Puerto Rico's ban on in-state casino advertising, "erroneously performed the First Amendment analysis." *Id.* at 509. The *Posadas* majority "erred in concluding that it was 'up to the legislature' to choose suppression over a less speech-restrictive policy," and the Court declined to "give force to its highly deferential approach" to the paternalistic whims of the state. *Id.* at 509–10.

The Court again rejected this paternalistic approach six years later in *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002). In striking down a ban on pharmaceutical advertising of "compounded drugs," the Court concluded that the state does not have an interest

[5] A year prior, the Court also struck down a federal law prohibiting a brewer from disseminating accurate information to the public about malt beverages. *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 491 (1995).

in "preventing the dissemination of truthful commercial information in order to prevent members of the public from making bad decisions with the information." *Id.* at 374.

In the campaign finance arena, the Court in *Citizens United v. Federal Election Commission* held federal prohibitions on independent corporate expenditures for electioneering communications to violate the First Amendment. 558 U.S. 08-205 (2010). The state can require certain disclaimers and disclosures, but as the Court concluded,

> The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.

Id. at 917 (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 341 (2003) (opinion of Kennedy, J.)).

And finally, as stated above, the Court in *Sorrell* struck down Vermont's prohibition on the sale and use of prescription records for marketing purposes under heightened constitutional scrutiny. 2011 WL 2472796. The Court rejected the proposition that "disfavored speech has adverse effects." *Id.* at *22. Content- or speaker-based censorship does not comport with the First Amendment merely because it alleviates fears that people will be persuaded to make "bad decisions if given truthful information." *Id.* at *21–22. Government may not "keep people in the dark" for what it "perceives to be their own good." *Id.* at *22.

D. Synthesis of Constitutional Standards Governing State Regulation of Lawyer Advertising

In light of the Court's holdings since it applied First Amendment protections to lawyer advertising in *Bates*, several propositions as to what a state may or may not regulate have become settled. A state may ban false or misleading advertising, as well as advertising that promotes or advocates illegal activity. *R.M.J.*, 455 U.S. at 203; *Bates*, 433 U.S. at 384. A state

may, to some extent, restrict the time, place, and manner of lawyers' advertising and solicitation, provided that such regulations are content neutral. *Fla. Bar*, 515 U.S. at 618; *Bates*, 433 U.S. at 384. A state may require reasonable warnings or disclaimers to dissipate the possibility of consumer confusion or deception. *Shapero*, 486 U.S. at 466; *Zauderer*, 471 U.S. at 652–53. And a state may reasonably restrict lawyer advertising and solicitation that is intrusive or overbearing. *Fla. Bar*, 515 U.S. 618; *Ohralik*, 436 U.S. 464; *Bates*, 433 U.S. at 384.

But a state may not categorically censor all advertising of legal services. *Bates*, 433 U.S. 350. And it may not impose content- or speaker-based burdens on commercial speech merely because it believes the advertisement will persuade people to act in ways the state finds unfavorable. *Sorrell*, 2011 WL 2472796, at *9; *Thompson*, 535 U.S. at 374. It may only regulate if it can establish a substantial interest that is directly and materially advanced by narrowly drawn means. *Fla. Bar*, 515 U.S. at 624; *Central Hudson*, 447 U.S. at 564–65.

As to what constitutes a substantial interest, a state has a recognized interest in protecting citizens who may be unable to make decisions about the selection of legal services or who may be susceptible to overbearing solicitation, but the state can only protect against a real harm. *Fla. Bar*, 515 U.S. 618; *Edenfield*, 507 U.S. at 770–71 ("This burden is not satisfied by mere speculation or conjecture; rather a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real."); *Primus*, 436 U.S. 412.

The Court has also articulated several scenarios where the means undertaken to achieve the proffered substantial interest are not sufficiently narrow in scope. A state may not flatly prohibit a lawyer from listing practice areas in language not approved by the bar or stating the jurisdictions in which he is licensed to practice, *R.M.J.*, 455 U.S. 191; suppress the use of illustrations in advertisements, *Zauderer*, 471 U.S. 626; uniformly proscribe targeted direct-mail

solicitations to potential clients, *Shapero*, 486 U.S. 466; or simply ban lawyers from noting their certification as a specialist, *Peel*, 496 U.S. 91. Under these settled principles—which affirm the centrality of free expression—several of Iowa's lawyer advertising rules likely would fail to withstand constitutional scrutiny.

II. Several Subsections of Iowa's Lawyer Advertising Rules Likely Violate the First Amendment

Because the Supreme Court's First Amendment jurisprudence strongly protects lawyer advertising against unreasonable regulation, multiple provisions of Iowa's Rules of Professional Conduct regarding information about legal services are likely unconstitutional.

A. Rule 32:7.1's Ban on "Undignified" Statements Is a Vague, Content-Based Restriction Unjustified by a Substantial Interest

In contrast to Rule 7.1(a)'s prohibition on false or misleading communication—which is justified on the rationale of *Bates*—Rule 7.1(b) imposes a content-laden burden on "undignified" statements that is neither justified by a substantial state interest nor supported by narrowly drawn means. Part (b) prohibits lawyers from making statements that are unverifiable, rely on emotional appeal, concern the quality of the lawyer's services, or, as Comment 3 explains, are "undignified" (Appendix I). Comment 3 also asserts that "only unambiguous information relevant to a layperson's decision regarding legal rights" can ensure that "advertising stratagems" will not hinder the informed choice concerning legal representation.

But *Sorrell* unequivocally rejected restrictions on commercial speech in place either because the state disagrees with the content or fears that the message will encourage "undesirable"—or for that matter "undignified"—behavior, 2011 WL 2472796, at *9. Iowa cannot presume that the public is not sophisticated enough to "realize the limitations of advertising" and determine which lawyer's services are most suitable. *See Bates*, 433 U.S. at

373–75. Because advertising actually ensures access to legal relief, especially for those who would not otherwise seek help, Iowa may only protect against real harms rather than stifling speech it deems suspicious. *See Fla. Bar*, 515 U.S. 618. "Undignified" or "unverifiable" advertising—terms that go undefined in the rules—is not necessarily false, misleading, or overbearing. And part (b) does not just apply to in-person solicitation, contingency fee arrangements, or waiting periods. It does not even limit its application through less-restrictive means of disclaimers or filing requirements. It is exactly the sort of content censorship of lawyer advertising that fails to withstand scrutiny.

B. The Content and Manner Restrictions of Rule 32:7.2 Do Nothing to Prevent Misleading Advertising

Rule 7.2 impermissibly restricts the content and manner in which lawyers may advertise their services in television or other electronic media and in telephone or other print directories.

1. Part (f)'s Strict Limits on the Use of Electronic Media Are Indistinguishable from Unconstitutional Limits on Other Media

Under the proper standard of intermediate scrutiny, Rule 7.1(f)'s limitations on television and other electronic advertising are antithetical to the rationale of *Zauderer* and subsequent decisions. Part (f) prohibits television advertisements that contain background sound, visual displays other than those allowed in print, more than one "non-dramatic" voice (it cannot be the lawyer's), and self-laudatory statements (Appendix J). In 1984, the Iowa Supreme Court held this rule constitutional under a "rational decision-making" standard induced from *Bates*. *Comm. on Prof'l Ethics & Conduct of the Iowa State Bar Ass'n v. Humphrey* (*Humphrey I*), 355 N.W.2d 565, 571 (Iowa 1984). In holding that a state's interest in regulating television advertising was to ensure the public's rational and voluntary decision-making process, it pointed to dicta in *Bates*, which noted that "special problems of advertising on the electronic broadcast media will warrant

special consideration." *Id.* (quoting *Bates*, 433 U.S. at 384). It also relied heavily on public survey data, which showed that viewers trusted the legal profession less after watching certain misleading commercials. *Id.*

On appeal, the U.S. Supreme Court vacated the judgment and remanded to the Iowa Supreme Court for reconsideration in light of its recent holding in *Zauderer*, which affirmed the right to use illustrations in print advertisements. *Humphrey & Haas v. Comm. on Prof'l Ethics & Conduct of the Iowa State Bar Ass'n*, 472 U.S. 1004 (1985). The Iowa Supreme Court reaffirmed its earlier holding on remand, distinguishing television advertisements from the print advertisements considered in *Zauderer*. *Comm. on Prof'l Ethics & Conduct of Iowa State Bar Ass'n v. Humphrey* (*Humphrey II*), 377 N.W.2d 643 (Iowa 1985). It reasoned, "Both sight and sound are immediate and can be elusive because, for the listener or viewer at least, in a flash they are gone without a trace. Lost is the opportunity accorded to the reader of printed advertisements to pause, to restudy, and to thoughtfully consider." *Id.* at 646.

On appeal of *Humphrey II*, the U.S. Supreme Court dismissed the case for lack of a substantial federal question. *Humphrey v. Comm. On Prof'l Ethics & Conduct of the Iowa State Bar Ass'n*, 476 U.S. 1165 (1986). Where the Court's refusal to decide *Humphrey II* could be seen as an affirmation of the Iowa Supreme Court's interpretation of *Zauderer*, the Court has never explicitly upheld restrictions on television advertising, and its jurisprudence post-*Humphrey II* indicates that *Zauderer*'s principles extend to all advertisements regardless of medium.

First, the heightened-scrutiny test of *Sorrell* and the framework of *Central Hudson* would control the analysis, not the "rational decision-making" standard that the *Humphrey I* Court adopted. Under that test and framework, Iowa must demonstrate that it has a substantial interest in regulating

television advertising, that this substantial interest is premised on more than its disagreement with the content of the speech, and that this substantial interest is advanced through means that are a reasonable fit and narrowly tailored. A mere chance of deceit is insufficient to deny First Amendment protection. *Ibanez*, 512 U.S. at 143 ("The State's burden is not slight . . . mere speculation or conjecture will not suffice.").

Second, Iowa's asserted interest in protecting its citizens from deceptive and overbearing television advertising is insufficient given the overly broad means it has chosen to accomplish this objective. Iowa's limits on visual displays and auditory components are indistinguishable from those restrictions struck down in *Zauderer*. It is true that *Zauderer*'s precise holding encompassed only print advertising, but its rationale applies equally to electronic media. Television and radio advertising lack the coercive force of in-person or telephonic solicitation as described in *Ohralik*; they are more akin to the direct-mail solicitations that *Shapero* supported given that the viewer can simply change the channel. They also serve an important communicative function that is not inherently misleading. *See Zauderer*, 471 U.S. at 648–49. And as the Court stated in *Bates*, "For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward." 433 U.S. at 379.

Finally, Iowa may only protect against real harm, so its reasoning in *Humphrey II*—that the "sight and sound" of television advertisements makes it impossible for the public to thoughtfully consider—is distinguishable from *Florida Bar* absent a concrete showing that such advertisements are false or misleading. *See* 377 N.W.2d at 646. The *Humphrey I* Court relied on public survey data purporting to show that television advertisements are deceiving, but the study's methodology does not support the Court's conclusion. The viewers only watched the

"misleading" advertisements, and the study only measured public perception and not the extent to which the public was misled. Additionally, neither the Rules Committee's expert nor the survey group itself found the advertisements misleading. *Humphrey I*, 355 N.W.2d at 572 (Larson, J., dissenting). Iowa cannot assert an interest in maintaining "professionalism" or a positive public perception, considering that the state has an even greater interest in ensuring the free flow of information and greater access to legal services. *See Bates*, 433 U.S. at 368–377. Even when the Court upheld a restriction based on public survey data in *Florida Bar*, it limited its holding to a thirty-day waiting period.

Electronic media lack the coercive effect that has justified bans on in-person solicitation and waiting periods, and restrictions on its use must withstand First Amendment scrutiny. Because the "sight and sound" of television advertisements are not inherently misleading or overbearing, Rule 7.2(f) is most likely unconstitutional.

2. The Restrictions on Permissible Content Represent an Unwarranted Laundry List that Chills the Efficacy of Lawyer Advertising

Parts (c) and (d) restrict a lawyer or law firm seeking to advertise in a telephone or city directory to listing only the lawyer's name, address, telephone number, and designation as a lawyer (Appendix J). Part (g) further prohibits a lawyer from communicating information to the public that does not fall under a laundry list of permissible topics, which includes "schools attended" and "technical and professional licenses." The rule does permit display advertisements provided that the lawyer, under Part (f), preserves a copy for at least three years and, under Part (h), complies with the fee information requirements. Comments 1 and 2 explain the asserted interest in these rules: because the public lacks sophistication, advertisements should only convey information necessary to assist the public in selecting legal representation.

Iowa's asserted interests, and the means it has chosen to advance these interests, are precisely what the Supreme Court rejected in *Bates*, *R.M.J.*, and *Shapero*. Simply put, the public is capable enough to realize the limitations of advertising, free flow of information means greater consumer access to information, restrictions on advertising have no effect on the quality of legal services, and absent "overreaching or undue influence," a state may only regulate with disclaimers or filing requirements. Additionally, these content-based restrictions likely are in place out of fear that any other information would cause people to make harmful choices. Yet under heightened scrutiny, the government cannot substitute its paternalistic preferences to manipulate consumer behavior. *Sorrell*, 2011 WL 2472796. The choice between which speech should be suppressed and which speech should be protected is a choice "that the First Amendment makes for us." *Va. Bd. of Pharmacy*, 425 U.S. at 770. A laundry list of permissible content hinders the free flow of commercial information—chilling a substantial state interest.

C. Rule 32:7.4's Limits on Practice Area Descriptions Are Identical to Those Struck Down in *R.M.J.*

Finally, under Rule 7.4(a), a lawyer may only advertise areas of practice by using specific descriptions, such as "Administrative Law" or "Employment Law" (Appendix K). This rule is nearly identical to the one struck down in *R.M.J.* (Appendix B). Comment 1 asserts that this restriction prevents false or misleading communications, but as the Court reasoned in *R.M.J.*, describing one's practice area in terms different from the prescribed list is not inherently misleading, but often more descriptive and informative. 455 U.S. at 205. So although a state has a substantial interest in protecting the public from false or misleading advertising, its means must be directly related to actual harm—not perceived indignity or unprofessionalism.

Appendix A. Arizona's Disciplinary Rule Under Scrutiny in *Bates*

> DR 2-101(B) "A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf.
>
> However, a lawyer recommended by, paid by, or whose legal services are furnished by, a qualified legal assistance organization may authorize or permit or assist such organization to use means of dignified commercial publicity, which does not identify any lawyer by name, to describe the availability or nature of its legal services or legal service benefits. This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:
>
> (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
>
> (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.
>
> (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
>
> (4) In and on legal documents prepared by him.
>
> (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.
>
> (6) In communications by a qualified legal assistance organization, along with the biographical information permitted under DR 2-102(A)(6) (biographical information that may be listed 'in a reputable law list or legal directory'), directed to a member of beneficiary of such organization."

Bates, 433 U.S. at 355.

Appendix B. Missouri's Disciplinary Rules Under Scrutiny in *R.M.J.*

DR 2-101(B) A lawyer may "publish…in newspapers, periodicals and the yellow pages of telephone directories" ten categories of information: name, address and telephone number; areas of practice; date and place of birth; schools attended; foreign language ability; office hours; fee for an initial consultation; availability of a schedule of fees; credit arrangements; and the fixed fee to be charged for certain specified "routine" legal services.

"[T]he following areas for fields of law may be advertised by use of the specific language hereinafter set out:

1. 'General Civil Practice'
2. 'General Criminal Practice'
3. 'General Civil and Criminal Practice.'

If a lawyer or law firm uses one of the above, no other area can be used…. If one of the above is not used, then a lawyer or law firm can use one or more of the following:

1. 'Administrative Law'
2. 'Anti-Trust Law'
3. 'Appellate Practice'
4. 'Bankruptcy'
5. 'Commercial Law'
6. 'Corporation Law and Business Organizations'
7. 'Criminal Law'
8. 'Eminent Domain Law'
9. 'Environmental Law'
10. 'Family Law'
11. 'Financial Institution Law'
12. 'Insurance Law'
13. 'International Law'
14. 'Labor Law'
15. 'Local Government Law'
16. 'Military Law'
17. 'Probate and Trust Law'
18. 'Property Law'
19. 'Public Utility Law'
20. 'Taxation Law'
21. 'Tort Law'
22. 'Trial Practice'
23. 'Workers Compensation Law.'

No deviation from the above phraseology will be permitted and no statement of limitation of practice can be stated."

> DR2-102(A)(2) permits a lawyer or firm to mail a dignified "brief professional announcement card stating new or changed associates or addresses, change of firm name, or similar matters." However, it does not permit a general mailing; the announcement cards may be sent only to "lawyers, clients, former clients, personal friends, and relatives."

R.M.J., 455 U.S. at 194–96 n.6.

Appendix C. Ohio's Disciplinary Rule Under Scrutiny in *Zauderer*

DR 2-101(B) "In order to facilitate the process of in-formed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-103, in print media or over radio or television. Print media includes only regularly published newspapers, magazines and other periodicals, classified telephone directories, city, county and suburban directories, law directories and law lists. The information disclosed by the lawyer in such publication or broadcast shall comply with DR 2-101(A) and be presented in a dignified manner without the use of drawings, illustrations, animations, portrayals, dramatizations, slogans, music, lyrics or the use of pictures, except for the use of pictures of the advertising lawyer, or the use of a portrayal of the scales of justice. Only the following information may be published or broadcast:

(1) Name, including name of law firm and names of professional associates, ad-dresses and telephone numbers;

(2) One or more fields of law in which the lawyer or law firm is available to practice, but may not include a statement that the practice is limited to or concentrated in one or more fields of law or that the lawyer or law firm specializes in a particular field of law unless authorized under DR 2-105;

(3) Age;

(4) Date of admission to the bar of a state, or federal court or administrative board or agency;

(5) Schools attended, with dates of graduation, degrees and other scholastic distinctions;

(6) Public or quasi-public offices;

(7) Military service;

(8) Published legal authorships;

(9) Holding scientific, technical and professional licenses, and memberships in such associations or societies;

(10) Foreign language ability;

(11) Whether credit cards or other credit arrangements are accepted;

(12) Office and telephone answering ser-vice hours;

(13) Fee for an initial consultation;

(14) Availability upon request of a written schedule of fees or an estimate of the fee to be charged for specific services;

(15) Contingent fee rates subject to DR 2-106(C), provided that the statement discloses whether percentages are computed before or after deduction of court costs and expenses;

(16) Hourly rate, provided that the statement discloses that the total fee charged will depend upon the number of hours which must be devoted to the particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee likely to be charged, in print size at least equivalent to the largest print used in setting forth the fee information;

(17) Fixed fees for specific legal services;

(18) Legal teaching positions, member-ships, offices, committee assignments, and section memberships in bar associations;

(19) Memberships and offices in legal fraternities and legal societies;

(20) In law directories and law lists only, names and addresses of references, and, with their written consent, names of clients regularly represented."

Zauderer, 471 U.S. at 633 n.4.

Appendix D. Kentucky's Disciplinary Rule Under Scrutiny in *Shapero*

> Rule 7.3 "A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in-person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term 'solicit' includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful."

Shapero, 486 U.S. at 470–71.

Appendix E. Illinois's Disciplinary Rule Under Scrutiny in *Peel*

> DR 2-105(a) "A lawyer shall not hold himself out publicly as a specialist, except as follows:
>
> (1) A lawyer admitted to practice before the United States Patent and Trademark Office may use the designation 'Patents,' 'Patent Attorney,' 'Patent Lawyer,' or 'Registered Patent Attorney' or any combination of those terms, on his letterhead and office sign.
>
> (2) A lawyer engaged in the trademark practice may use the designation 'Trademarks,' 'Trademark Attorney' or 'Trademark Lawyer,' or a combination of those terms, and a lawyer engaged in the admiralty practice may use the designation 'Admiralty,' 'Proctor in Admiralty' or 'Admiralty Lawyer,' or a combination of those terms, in any form of communication otherwise permitted under Rules 2-101 through 2-104."
>
> (3) A lawyer or law firm may specify or designate any area or field of law in which he or its partners concentrates or limits his or its practice. Except as set forth in Rule 2-105(a), no lawyer may hold himself out as 'certified' or a 'specialist.'"

Peel, 496 U.S. at 97 n.8.

Appendix F. Ohio's Disciplinary Rules Under Scrutiny in *Ohralik*

> DR 2-103(A) "A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer."
>
> DR 2-104(A) "A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:
>
> "(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client."

Ohralik, 436 U.S. at 454 n.9.

Appendix G. South Carolina's Disciplinary Rules Under Scrutiny in *Primus*

DR 2-103(D) "(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office: (a) Operated or sponsored by a duly accredited law school; (b) Operated or sponsored by a bona fide non-profit community organization; (c) Operated or sponsored by a govern-mental agency; (d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geo-graphical area in which the association exists.

(4) A bar association representative of the general bar of the geographical area in which the association exists.

(5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met: (a) The primary purposes of such organization do not include the rendition of legal services; (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization; (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer; and (d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter."

DR 2-104(A) "A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize le-gal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored

by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1), (2), or (5) may represent a member or beneficiary thereof to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder."

Primus, 436 U.S. at 421 nn.10–11.

Appendix H. Florida's Disciplinary Rules Under Scrutiny in *Florida Bar*

> Rule 4-7.4(b)(1) "A lawyer shall not send, or knowingly permit to be sent…a written communication to a prospective client for the purpose of obtaining professional employment if: (A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication."
>
> Rule 4-7.8(a) "A lawyer shall not accept referrals from a lawyer referral service unless the service: (1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer."

Florida Bar, 515 U.S. at 620.

Appendix I. Rule 32:7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not communicate with the public using statements that are unverifiable. In addition, advertising permitted under these rules shall not rely on emotional appeal or contain any statement or claim relating to the quality of the lawyer's legal services.

Comment

[1] This rule governs all communications about a lawyer's services, including advertising permitted by rule 32:7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful and verifiable.

[2] Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] A lawyer should ensure that information contained in any advertising which the lawyer publishes, or causes to be published, is relevant, is dignified, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems that hinder rather than facilitate intelligent selection of counsel. Appeal should not be made to the prospective client's emotions, prejudices, or personal likes or dislikes. Care should be exercised to ensure that false hopes of success or undue expectations are not communicated. Only unambiguous information relevant to a layperson's decision regarding legal rights or the selection of counsel, provided in ways that comport with the dignity of the profession and do not demean the administration of justice, is appropriate in public communications.

[4] See also rule 32:8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law.

Iowa Rules of Prof'l Conduct R. 32:7.1 (2010).

Appendix J. Rule 32:7.2 Advertising

(a) The following communications shall not be considered advertising and accordingly are not subject to rules 32:7.2, 32:7.3, and 32:7.4:
(1) communications or solicitations for business between lawyers;
(2) communications between a lawyer and an existing or former client, provided the lawyer does not know or have reason to know the attorney-client relationship has been terminated; or
(3) communications by a lawyer that are in reply to a request for information by a member of the public that was not prompted by unauthorized advertising by the lawyer; information available through a hyperlink on a lawyer's Web site shall constitute this type of communication. Nonetheless, any brochures or pamphlets containing biographical and informational data disseminated to existing clients, former clients, lawyers, or in response to a request for information by a member of the public shall include the disclosures required by paragraph (h) when applicable.

(b) Subject to the limitations contained in these rules, a lawyer may advertise services through written, recorded, or electronic communication, including public media. Any communication made pursuant to this rule shall include the name and office of at least one lawyer or law firm responsible for the content.

(c) Subject to the limitations contained in these rules, a lawyer licensed to practice law in Iowa may permit the inclusion of the lawyer's name, address, telephone number, and designation as a lawyer, in a telephone or city directory, subject to the following requirements:
(1) Only a lawyer's name, address, telephone number, and designation as a lawyer may be alphabetically listed in the residential, business, and classified sections of the telephone or city directory.
(2) Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a lawyer who has complied with rule 32:7.4(e) may be listed in classifications or headings identifying those fields or areas of practice as listed in rule 32:7.4(a). By further exception, a lawyer qualified under rule 32:7.4 to practice in the field of taxation law also may be listed under the general heading "Tax Preparation" or "Tax Return Preparation" either in lieu of or in addition to the general heading "Lawyers" or "Attorneys."
(3) All other telephone or city directory advertising permitted by these rules, including display or box advertisements, shall include the disclosures required by paragraph (h) when applicable.

(d) Subject to the limitations contained in these rules, a law firm may permit the inclusion of the firm name, address, and telephone number in a telephone or city directory, subject to the following requirements:
(1) The firm name, a list of its members, address, and telephone number may be listed alphabetically in the residential, business, and classified sections of the telephone or city directory.

(2) Listings in the classified section shall be under the general heading "Lawyers" or "Attorneys," except that a law firm may be listed in each of the classifications or headings identifying those fields or areas of practice as listed in rule 32:7.4(a) in which one or more members of the firm are qualified by virtue of compliance with rule 32:7.4(e).
(3) All other telephone or city directory advertising permitted by these rules, including display or box advertising, may contain the firm name, address, and telephone number, and the names of the individual lawyer members of the firm. All display or box advertisements shall include within the advertisement the disclosures required by paragraph (h) when applicable.

(e) Information permitted by these rules, articulated only by a single nondramatic voice, not that of the lawyer, and with no other background sound, may be communicated by radio or television, or other electronic or telephonic media. In the case of television, no visual display shall be allowed except that allowed in print as articulated by the announcer. All such communications shall contain the disclosures required by paragraph (h) when applicable.

(f) Whether or not the advertisement contains fee information, a lawyer shall preserve for at least three years a copy of each advertisement placed in a newspaper, in the classified section of the telephone or city directory, or in a periodical, a tape of any radio, television, or other electronic or telephonic media commercial, or recording, and a copy of all information placed on the World Wide Web, and a record of the date or dates and name of the publication in which the advertisement appeared or the name of the medium through which it was aired.

(g) The following information may be communicated to the public in the manner permitted by this rule, provided it is presented in a dignified style:
(1) name, including name of law firm, names of professional associates, addresses, telephone numbers, Internet addresses and URLs, and the designation "lawyer," "attorney," "J.D.," "law firm," or the like;
(2) the following descriptions of practice: (i) "general practice"; (ii) "general practice including but not limited to" followed by one or more fields of practice descriptions set forth in rule 32:7.4(a)-(c); (iii) fields of practice, limitation of practice, or specialization, but only to the extent permitted by rule 32:7.4; and (iv) limited representation as authorized by rule 32:1.2(c);
(3) date and place of birth;
(4) date and place of admission to the bar of state and federal courts;
(5) schools attended, with dates of graduation, degrees, and other scholastic distinctions;
(6) public or quasi-public offices;
(7) military service;
(8) legal authorships;
(9) legal teaching positions;
(10) memberships, offices, and committee and section assignments in bar associations;
(11) memberships and offices in legal fraternities and legal societies;
(12) technical and professional licenses;

(13) memberships in scientific, technical, and professional associations and societies; and
(14) foreign language ability.

(h) Fee information may be communicated to the public in the manner permitted by this rule, provided it is presented in a dignified style.
(1) The following information may be communicated: (i) the fee for an initial consultation; (ii) the availability upon request of either a written schedule of fees, or an estimate of the fee to be charged for specific services, or both; (iii) contingent fee rates, subject to rule 32:1.5(c) and (d), provided that the statement discloses whether percentages are computed before or after deduction of costs and advises the public that, in the event of an adverse verdict or decision, the contingent fee litigant could be liable for court costs, expenses of investigation, expenses of medical examinations, and costs of obtaining and presenting evidence; (iv) fixed fees or range of fees for specific legal services; (v) hourly fee rates; and (vi) whether credit cards are accepted.
(2) If fixed fees or a range of fees for specific legal services are communicated, the lawyer must disclose, in print size at least equivalent to the largest print used in setting forth the fee information, the following information: (i) that the stated fixed fees or range of fees will be available only to clients whose matters are encompassed within the described services; and (ii) if the client's matters are not encompassed within the described services, or if an hourly fee rate is stated, the client is entitled, without obligation, to a specific written estimate of the fees likely to be charged.
(3) For purposes of these rules, the term "specific legal services" shall be limited to the following services: (i) abstract examinations and title opinions not including services in clearing title; (ii) uncontested dissolutions of marriage involving no disagreement concerning custody of children, alimony, child support, or property settlement. See rule 32:1.7(c); (iii) wills leaving all property outright to one beneficiary and contingently to one beneficiary or one class of beneficiaries; (iv) income tax returns for wage earners; (v) uncontested personal bankruptcies; (vi) changes of name; (vii) simple residential deeds; (viii) residential purchase and sale agreements; (ix) residential leases; (x) residential mortgages and notes; (xi) powers of attorney; (xii) bills of sale; and (xiii) limited representation as authorized by rule 32:1.2(c).
(4) Unless otherwise specified in the public communication concerning fees, the lawyer shall be bound, in the case of fee advertising in the classified section of the telephone or city directory, for a period of at least the time between printings of the directory in which the fee advertisement appears and in the case of all other fee advertising for a period of at least ninety days thereafter, to render the stated legal service for the fee stated in the communication unless the client's matters do not fall within the described services. In that event or if a range of fees is stated, the lawyer shall render the service for the estimated fee given the client in advance of rendering the service. (i) In the event a lawyer's communication seeks to advise the institution of litigation, the communication must also disclose that the filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the person so filing liable for malicious prosecution or abuse of process.

(j) A lawyer recommended by, paid by, or whose legal services are furnished by an organization listed in rule 32:7.7(d) may authorize, permit, or assist such organization to

use means of dignified commercial publicity that does not identify any lawyer by name to describe the availability or nature of its legal services or legal service benefits.

(k) This rule does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name:
(1) in political advertisements when the professional status is germane to the political campaign or to a political issue;
(2) in public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients;
(3) in routine reports and announcements of a bona fide business, civic, professional, or political organization in which the lawyer serves as a director or officer;
(4) in and on legal documents prepared by the lawyer;
(5) in and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof; and
(6) in communications by a qualified legal assistance organization, along with the biographical information permitted under paragraph (g), directed to a member or beneficiary
of such organization.

(l) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item or voluntarily give any information to such representatives which, if published in a news item, would be in violation of rule 32:7.1.

Comment

[1] Advertisements and public communications, whether in reputable legal directories, telephone directories, or newspapers, should be formulated to convey only information that is necessary for the client to make an appropriate selection. Competency may be a factor in the selection of a lawyer. However, competency cannot be determined from an advertisement. The cost of legal services may also be a factor in the selection of a lawyer. A layperson may be aided in the selection of a lawyer if the costs of legal services were available for comparison or could be considered in an atmosphere conducive to logic, reason, and reflection. This factual information can be made available through advertising. Care must be exercised to ensure that there is a proper basis for the comparison of costs communicated in a manner that will truthfully inform, and not mislead, a prospective client as to the total costs. For example, to state an hourly charge and to characterize it as a "reasonable fee" is misleading because the total cost or fee can vary greatly depending upon the number of hours spent.

[2] The lack of sophistication on the part of many members of the public concerning legal services and the importance of the interests affected by the choice of a lawyer require that special care be taken by lawyers to avoid misleading the public and to ensure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits to the public of a lawyer's advertising depend

upon its reliability and accuracy. Advertising marked by excesses of content, volume, scope or frequency, or which unduly emphasizes unrepresentative biographical information, does not provide that public benefit. Fee advertising involves special concerns. With rare exception, lawyers render unique and varied services for each client, even as to so-called "routine" matters. When consulted about any matter, whether or not "routine," a lawyer should make relevant inquiries, which may uncover the need for different services than those that the client originally sought. These factors make it difficult to set a fixed fee or a range of fees for a specific legal service in advance of rendering the service and provide temptation to depart from an advertised fee or to fail to render a needed service. Thus, a lawyer who advertises a fee for a service should exercise particular caution to avoid misleading prospective clients and should include appropriate disclaimers. A lawyer should also scrupulously avoid the use of fee advertising as an indirect means of attracting clients in the hope of performing other, more lucrative, legal services. In communications concerning a lawyer's fees, the lawyer may use restrained subjective characterizations of rates or fees such as "reasonable," "moderate," and "very reasonable," but shall avoid all unrestrained subjective characterizations of rates or fees, such as, but not limited to, "cut rate," "lowest," "giveaway," "below cost," "discount," and "special."

[3] All disclosures required to be published by these rules shall be in 9-point type or larger. Whenever a disclosure or notice is required by these rules, a lawyer or law firm hosting a site on the World Wide Web shall display the required disclosure or notice on the site's home page.

[4] Nothing contained in these rules shall prohibit a lawyer from permitting the inclusion in reputable law lists and law directories intended primarily for the use of the legal profession of such information as traditionally has been included in these publications whether published in print or on the Internet or other electronic system.

[5] Any member of the bar desiring to expand the information authorized for disclosure pursuant to this rule or to provide for its dissemination through forums other than as authorized herein, may file an application with the supreme court specifying the requested change. Court approval of the application is required before an attorney may engage in advertising that includes the expanded information or is disseminated through the new forum.

[6] When the court receives a request to expand or constrict the list of "specific legal services" in rule 32:7.2(h)(3), it will consider the following criteria in determining which services should be included in the list:
(1) the description of the service would not be misunderstood by the average layperson or be misleading or deceptive;
(2) substantially all of the service normally can be performed in the lawyer's office with the aid of standardized forms and office procedures;
(3) the service does not normally involve a substantial amount of legal research, drafting of unique documents, investigation, court appearances, or negotiation with other parties or their attorneys; and

(4) competent performance of the service normally does not depend upon ascertainment and consideration of more than a few varying factual circumstances.

Iowa Rules of Prof'l Conduct R. 32:7.2.

Appendix K. Rule 32:7.4 Communication of Fields of Practice and Specialization

(a) A lawyer may communicate the fact that the lawyer practices in or limits the lawyer's practice to certain fields of law as authorized by this rule. Subject to the exceptions and requirements of this rule, a lawyer may identify or describe the lawyer's practice by reference to the following fields of practice:
Administrative Law
Adoption Law
Agricultural Law
Alternate Dispute Resolution
Antitrust & Trade Regulation
Appellate Practice
Aviation & Aerospace
Banking Law
Bankruptcy
Business Law
Civil Rights & Discrimination
Collections Law
Commercial Law
Communications Law
Constitutional Law
Construction Law
Contracts
Corporate Law
Criminal Law
Debtor and Creditor
Education Law
Elder Law
Election, Campaign & Political
Eminent Domain
Employee Benefits
Employment Law
Energy
Entertainment & Sports
Environmental Law
Family Law
Finance
Franchise Law
Government
Government Contracts
Health Care
Immigration
Indians & Native Populations
Information Technology Law
Insurance
Intellectual Property

International Law
International Trade
Investments
Juvenile Law
Labor Law
Legal Malpractice
Litigation
Media Law
Medical Malpractice
Mergers & Acquisitions
Military Law
Municipal Law
Natural Resources
Nonprofit Law
Occupational Safety & Health
Pension & Profit Sharing Law
Personal Injury
Product Liability
Professional Liability
Public Utility Law
Real Estate
Securities
Social Security Law
Taxation
Tax Returns
Technology and Science
Toxic Torts
Trademarks & Copyright Law
Transportation
Trial Law
Wills, Trusts, Estate Planning & Probate Law
Workers' Compensation
Zoning, Planning & Land Use
Any member of the bar desiring to expand this list may file an application with the supreme court specifying the requested change. In describing the field of practice the lawyer may use the suffix "law," "lawyer," "matters," "cases," or "litigation."

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney."

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by the Iowa Supreme Court Attorney Disciplinary Board; and
(2) the name of the certifying organization is clearly identified in the communication.

(e) Prior to publicly describing one's practice as permitted in paragraph (a) and (c), a lawyer shall comply with the following prerequisites:
(1) For all fields of practice designated, a lawyer must have devoted the greater of 100 hours or 10 percent of the lawyer's time spent in the actual practice of law to each indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least ten hours of accredited continuing legal education courses of study in each indicated field of practice during the preceding calendar year.
(2) A lawyer who wishes to use the terms "practice limited to . . ." or "practicing primarily in . . ." must have devoted the greater of 400 hours or 40 percent of the lawyer's time spent in the actual practice of law to each separate indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least fifteen hours of accredited continuing legal education courses of study in each separate indicated field of practice during the preceding calendar year. Prior to communication of a description or indication of limitation of practice, a lawyer shall report the lawyer's compliance with the eligibility requirements of this paragraph each year to the Commission on Continuing Legal Education. See Iowa Ct. R. 41.9.

(f) A lawyer describing the lawyer's practice as "General practice including but not limited to" followed by one or more fields of practice descriptions set forth in this rule need not comply with the eligibility requirements of paragraph (e).

Comment

[1] In some instances lawyers limit their practice to, or practice primarily in, certain fields of law. In the absence of controls to ensure the existence of special competence, lawyers should not be permitted to hold themselves out as specialists or as having special training or ability other than in the field of patent or admiralty law where a holding out as a specialist historically has been permitted. However, lawyers who comply with this rule may hold themselves out publicly as practicing in, or limiting their practice to, certain fields of law, but such communications are subject to the false and misleading standard applied in rule 32:7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by the Iowa Supreme Court Attorney Disciplinary Board. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying

> organizations may be expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Iowa Rules of Prof'l Conduct R. 32:7.4.